



United States  
Department of  
Agriculture

# Packers and Stockyards Act, 1921

Grain Inspection,  
Packers and  
Stockyards  
Administration

Packers and  
Stockyards  
Programs

March 2004



## **United States Department of Agriculture**

### Grain Inspection, Packers and Stockyards Administration

#### Packers and Stockyards Programs

**Packers and Stockyards Act, 1921**, enacted August 15, 1921 (42 Stat. 159) and amended and supplemented by the following acts of Congress:

May 5, 1926 (44 Stat. 397)

June 7, 1934 (48 Stat. 926)

August 14, 1935 (49 Stat. 648)

August 10, 1939 (53 Stat. 1351)

June 19, 1942 (56 Stat. 372)

July 12, 1943 (57 Stat. 422)

June 25, 1948 (62 Stat. 909 and 991)

May 24, 1949 (63 Stat. 107)

August 28, 1958 (72 Stat. 944, Pub. L. 85-791)

September 2, 1958 (72 Stat. 1749, Pub. L. 85-909)

July 8, 1963 (77 Stat. 79)

July 31, 1968 (82 Stat. 474, Pub. L. 90-446)

September 13, 1976 (90 Stat. 1249, Pub. L. 94-410)

October 2, 1978 (92 Stat. 886, Pub. L. 95-409)

November 23, 1987 (101 Stat. 917, Pub. L. 100-173)

October 13, 1994 (108 Stat. 3178, Pub. L. 103-354)

October 22, 1999 (113 Stat. 1210, Pub. L. 106-78)

November 9, 2000 (114 Stat. 2077, Pub. L. 106-472)

May 13, 2002 (116 Stat. 134, Pub. L. 107-171)

November 2, 2002 (116 Stat. 1921, Pub. L. 107-273)

NOTE: Congress directed agencies to update the civil penalties every 4 years.

Effective September 2, 1997, 7 CFR 3.91, amended the civil penalties, as required by Pub. L. 101-410 and 104-134.

## **Title I—General Definitions**

### **Section 1. Short Title.**

This Act may be cited as the “Packers and Stockyards Act, 1921.” (7 U.S.C. 181)

### **Section 2.<sup>1</sup>**

(a) DEFINITIONS. When used in this Act—

- (1) PERSON. The term “person” includes individuals, partnerships, corporations, and associations;
- (2) SECRETARY. The term “Secretary” means the Secretary of Agriculture;
- (3) MEAT FOOD PRODUCTS. The term “meat food products” means all products and byproducts of the slaughtering and meat-packing industry— if edible;
- (4) LIVESTOCK. The term “livestock” means cattle, sheep, swine, horses, mules, or goats—whether live or dead;
- (5) LIVESTOCK PRODUCTS. The term “livestock products” means all products and byproducts (other than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from livestock;
- (6) POULTRY. The term “poultry” means chickens, turkeys, ducks, geese, and other domestic fowl;
- (7) POULTRY PRODUCT. The term “poultry product” means any product or byproduct of the business of slaughtering poultry and processing poultry after slaughter;
- (8) POULTRY GROWER. The term “poultry grower” means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry;
- (9) POULTRY GROWING ARRANGEMENT. The term “poultry growing arrangement” means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another’s instructions, for slaughter;
- (10) LIVE POULTRY DEALER. The term “live poultry dealer” means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either

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<sup>1</sup> Amended by acts of Congress, approved Sept. 13, 1976, Nov. 23, 1987, and May 13, 2002.

slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce; and

(11) COMMERCE. The term “commerce” means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(12) SWINE CONTRACTOR. The term “swine contractor” means any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if—

- (A) the swine is obtained by the person in commerce; or
- (B) the swine (including products from the swine) obtained by the person is sold or shipped in commerce.

(13) SWINE PRODUCTION CONTRACT. The term “swine production contract” means any growout contract or other arrangement under which a swine production contract grower raises and cares for the swine in accordance with the instructions of another person.

(14) SWINE PRODUCTION CONTRACT GROWER. The term “swine production contract grower” means any person engaged in the business of raising and caring for swine in accordance with the instructions of another person. (7 U.S.C. 182)

(b) WHEN TRANSACTION DEEMED IN COMMERCE; “STATE” DEFINED. For the purpose of this Act (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of livestock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word “State” includes Territory, the District of Columbia, possession of the United States, and foreign nation. (7 U.S.C. 183)

## **Title II — Packers Generally**

### **Subtitle A—General Provisions**

#### **Section 201. “Packer” defined.<sup>2</sup>**

When used in this Act the term “packer” means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. (7 U.S.C. 191)

#### **Section 202. Unlawful practices enumerated.<sup>3</sup>**

It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

- (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
- (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
- (c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or
- (d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
- (e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

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<sup>2</sup> Amended by an act of Congress, approved Sept. 13, 1976.

<sup>3</sup> Amended by acts of Congress, approved Aug. 14, 1935, Sept. 2, 1958, Sept. 13, 1976, Nov. 23, 1987, Oct. 22, 1999, and May 13, 2002. [NOTE: The Oct. 22, 1999 temporarily struck out “whatsoever” after “locality in any respect” and after “disadvantage in any respect” in subsection (b). The amendment, and other amendments made by the act of Congress, terminate 5 years after Oct. 22, 1999 (Oct. 22, 2004).]

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or

(g) Conspire, combine, agree or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e) of this section. (7 U.S.C. 192)

**Section 203. Procedure before Secretary for violations.**<sup>4</sup>

(a) COMPLAINT; HEARING; INTERVENTION. Whenever the Secretary has reason to believe that any packer or swine contractor has violated or is violating any provision of this title, he shall cause a complaint in writing to be served upon the packer or swine contractor, stating his charges in that respect, and requiring the packer or swine contractor to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer or swine contractor a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing the Secretary may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the packer or swine contractor, be adjourned for a period not exceeding fifteen days.

(b) REPORT AND ORDER; PENALTY. If, after such hearing, the Secretary finds that the packer or swine contractor has violated or is violating any provisions of this title covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer or swine contractor an order requiring such packer or swine contractor to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$11,000 for each such violation.<sup>5</sup> In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States.

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<sup>4</sup> Amended by acts of Congress, approved Aug. 28, 1958, Sept. 13, 1976, and May 13, 2002.

<sup>5</sup> The civil penalty was amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original civil penalty in the Packers and Stockyards Act was \$10,000.

(c) AMENDMENT OF REPORT OR ORDER. Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer or swine contractor to be heard, may amend or set aside the report or order, in whole or in part.

(d) SERVICE OF PROCESS. Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914. (7 U.S.C. 193)

**Section 204. Conclusiveness of order; appeal and review.**<sup>6</sup>

(a) FILING OF PETITION; BOND. An order made under section 203 shall be final and conclusive unless within thirty days after service the packer or swine contractor appeals to the court of appeals for the circuit in which he has his principal place of business by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer or swine contractor will pay the costs of the proceedings if the court so directs.

(b) FILING OF RECORD BY SECRETARY. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) TEMPORARY INJUNCTION. At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the packer or swine contractor and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) EVIDENCE. The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

(e) ACTION BY COURT. The court may affirm, modify, or set aside the order of the Secretary.

(f) ADDITIONAL EVIDENCE. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall

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<sup>6</sup> Amended by acts of Congress, approved Aug. 28, 1958, Nov. 8, 1984, and May 13, 2002.



order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

(g) INJUNCTION. If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer or swine contractor, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) FINALITY. The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction unless so ordered by the Supreme Court. (7 U.S.C. 194)

**Section 205. Punishment for violation of order.<sup>7</sup>**

Any packer or swine contractor, or any officer, director, agent, or employee of a packer or swine contractor, who fails to obey any order of the Secretary issued under the provisions of section 203, or such order as modified—

- (1) After the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time; or
- (2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or
- (3) After such order, or such order as modified, has been sustained by the courts as provided in section 204; shall on conviction be fined not less than \$500 nor more than \$10,000, or imprisoned for not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense. (7 U.S.C. 195)

**Section 206. Statutory trust established; livestock.<sup>8</sup>**

(a) PROTECTION OF PUBLIC INTEREST FROM INADEQUATE FINANCING ARRANGEMENTS. It is hereby found that a burden on and obstruction to commerce

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<sup>7</sup> Amended by an act of Congress, approved May 13, 2002.

<sup>8</sup> Added by an act of Congress, approved Sept. 13, 1976.

in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables or proceeds from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

(b) LIVESTOCK, INVENTORIES, RECEIVABLES AND PROCEEDS HELD BY PACKER IN TRUST FOR BENEFIT OF UNPAID CASH SELLERS; TIME LIMITATIONS; EXEMPT PACKERS; EFFECT OF DISHONORED INSTRUMENTS; PRESERVATION OF TRUST BENEFITS BY SELLER. All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers: *Provided*, That any packer whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this section. Payment shall not be considered to have been made if the seller receives a payment instrument which is dishonored: *Provided*, That the unpaid seller shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within thirty days of the final date for making a payment under section 409, or within fifteen business days after the seller has received notice that the payment instrument promptly presented for payment has been dishonored, the seller has not preserved his trust under this subsection. The trust shall be preserved by giving written notice to the packer and by filing such notice with the Secretary.

(c) DEFINITION OF CASH SALE. For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.  
(7 U.S.C. 196)

### **Section 207. Statutory trust established; poultry.<sup>9</sup>**

(a) PROTECTION OF PUBLIC INTEREST FROM INADEQUATE FINANCING ARRANGEMENTS. It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase in cash sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in poultry and protect the public interest.

(b) POULTRY, INVENTORIES, RECEIVABLES AND PROCEEDS HELD BY DEALER IN TRUST FOR BENEFIT OF UNPAID CASH SELLERS OR POULTRY GROWERS. All poultry

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<sup>9</sup> Added by an act of Congress, approved Nov. 23, 1987.

obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers, unless such live poultry dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of \$100,000.

(c) EFFECT OF DISHONORED INSTRUMENTS. Payment shall not be considered to have been made if the cash seller or poultry grower receives a payment instrument which is dishonored.

(d) PRESERVATION OF TRUST BENEFIT BY SELLER OR POULTRY GROWER. The unpaid cash seller or poultry grower shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within 30 days of the final date for making payment under section 410, or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored, the seller or poultry grower has not preserved his trust under this section. The trust shall be preserved by giving written notice to the live poultry dealer and by filing such notice with the Secretary.

(e) DEFINITION OF CASH SALE. For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.  
(7 U.S.C. 197)

## **Subtitle B—Swine Packer Marketing Contracts**

### **Section 221. Definitions.**<sup>10</sup>

Except as provided in section 223(a), in this subtitle:

- (1) MARKET. The term “market” means the sale or disposition of swine, pork, or pork products in commerce.
- (2) PACKER. The term “packer” has the meaning given the term in section 231 of the Agricultural Marketing Act of 1946.
- (3) PORK. The term “pork” means the meat of a porcine animal.
- (4) PORK PRODUCT. The term “pork product” means a product or byproduct produced or processed in whole or in part from pork.
- (5) STATE. The term “State” means each of the 50 States.
- (6) SWINE. The term “swine” means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.
- (7) TYPE OF CONTRACT. The term “type of contract” means the classification of contracts or risk management agreements for the purchase of swine by—
  - (A) the mechanism used to determine the base price for swine committed to a packer, grouped into practicable classifications by the Secretary (including swine or pork market formula purchases, other market formula purchases, and other purchase arrangements); and
  - (B) the presence or absence of an accrual account or ledger that must be repaid by the producer or packer that receives the benefit of the contract pricing mechanism in relation to negotiated prices.
- (8) OTHER TERMS. Except as provided in this subtitle, a term has the meaning given the term in section 212 or 231 of the Agricultural Marketing Act of 1946. (7 U.S.C. 198)

### **Section 222. Swine Packer Marketing Contracts Offered to Producers.**<sup>11</sup>

- (a) IN GENERAL. Subject to the availability of appropriations to carry out this section, the Secretary shall establish and maintain a library or catalog of each type of contract offered by packers to swine producers for the purchase of all or part of

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<sup>10</sup> Added by an act of Congress, approved Oct. 22, 1999. [NOTE: The Oct. 22, 1999 temporarily added this section. The amendment, and other amendments made by the act of Congress, terminate 5 years after Oct. 22, 1999 (Oct. 22, 2004).]

<sup>11</sup> Added by an act of Congress, approved Oct. 22, 1999. [NOTE: The Oct. 22, 1999 temporarily added this section. The amendment, and other amendments made by the act of Congress, terminate 5 years after Oct. 22, 1999 (Oct. 22, 2004).]

the producers' production of swine (including swine that are purchased or committed for delivery), including all available noncarcass merit premiums.

(b) AVAILABILITY. The Secretary shall make available to swine producers and other interested persons information on the types of contracts described in subsection (a), including notice (on a real-time basis if practicable) of the types of contracts that are being offered by each individual packer to, and are open to acceptance by, producers for the purchase of swine.

(c) CONFIDENTIALITY. The reporting requirements under subsections (a) and (b) shall be subject to the confidentiality protections provided under section 251 of the Agricultural Marketing Act of 1946.

(d) INFORMATION COLLECTION.

(1) IN GENERAL. The Secretary shall—

(A) obtain (by a filing or other procedure required of each individual packer) information indicating what types of contracts for the purchase of swine are available from each packer; and

(B) make the information available in a monthly report to swine producers and other interested persons.

(2) CONTRACTED SWINE NUMBERS. Each packer shall provide, and the Secretary shall collect and publish in the monthly report required under paragraph (1)(B), information specifying—

(A) the types of existing contracts for each packer;

(B) the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under the contract for the following 6-month and 12-month periods;

(C) an estimate of the total number of swine committed by contract for delivery to all packers within the 6-month and 12-month periods following the date of the report, reported by reporting region and by type of contract; and

(D) an estimate of the maximum total number of swine that potentially could be delivered within the 6-month and 12-month periods following the date of the report under the provisions described in subparagraph (B) that are included in existing contracts, reported by reporting region and by type of contract.

(e) VIOLATIONS. It shall be unlawful and a violation of this title for any packer to willfully fail or refuse to provide to the Secretary accurate information required under, or to willfully fail or refuse to comply with any requirement of, this section.

(f) AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as necessary to carry out this section. (7 U.S.C. 198a)

**Section 223. Report on the Secretary’s Jurisdiction, Power, Duties, and Authorities.**<sup>12</sup>

(a) DEFINITION OF PACKER. In this section, the term “packer” has the meaning given the term in section 201 of the Packers and Stockyards Act, 1921.

(b) REPORT. Not later than 90 days after the date of the enactment of this subtitle,<sup>13</sup> the Comptroller General of the United States shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the jurisdiction, powers, duties, and authorities of the Secretary that relate to packers and other persons involved in procuring, slaughtering, or processing swine, pork, or pork products that are covered by this Act and other laws, including—

(1) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), especially sections 6, 8, 9, and 10 of that Act (15 U.S.C. 46, 48, 49, and 50); and

(2) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(c) CONTENTS. The Comptroller General shall include in the report an analysis of—

(1) burdens on and obstructions to commerce in swine, pork, and pork products by packers, and other persons that enter into arrangements with the packers, that are contrary to, or do not protect, the public interest;

(2) noncompetitive pricing arrangements between or among packers, or other persons involved in the processing, distribution, or sale of pork and pork products, including arrangements provided for in contracts for the purchase of swine;

(3) the effective monitoring of contracts entered into between packers and swine producers;

(4) investigations that relate to, and affect, the disclosure of—

(A) transactions involved in the business conduct and practices of packers; and

(B) the pricing of swine paid to producers by packers and the pricing of products in the pork and pork product merchandising chain;

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<sup>12</sup> Added by an act of Congress, approved Oct. 22, 1999. [NOTE: The Oct. 22, 1999 act temporarily added this part. The amendment, and other amendments made by this act of Congress, terminate 5 years after Oct. 22, 1999 (Oct. 22, 2004).]

<sup>13</sup> Ibid.

(5) the adequacy of the authority of the Secretary to prevent a packer from unjustly or arbitrarily refusing to offer a producer, or disqualifying a producer from eligibility for, a particular contract or type of contract for the purchase of swine; and

(6) the ability of the Secretary to cooperate with and enhance the enforcement of actions initiated by other Federal departments and agencies, or Federal independent agencies, to protect trade and commerce in the pork and pork product industries against unlawful restraints and monopolies. (7 U.S.C. 198b)

### **Title III—Stockyards and Stockyard Dealers<sup>14</sup>**

#### **Section 301. “Stockyard owner”; “stockyard services”; “market agency”; “dealer”; defined.<sup>15</sup>**

When used in this Act—

- (a) The term “stockyard owner” means any person engaged in the business of conducting or operating a stockyard;
- (b) The term “stockyard services” means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;
- (c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services; and
- (d) The term “dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser. (7 U.S.C. 201)

#### **Section 302. “Stockyard” defined; determination by Secretary as to particular yard.<sup>16</sup>**

- (a) When used in this title the term “stockyard” means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.
- (b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this title until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition. (7 U.S.C. 202)

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<sup>14</sup> The term “Stockyard Dealer” was not part of the original legislative language of the Packers and Stockyards Act as passed by Congress, nor was the term incorporated into the law as a result of any subsequent amendment. The term appears, for the first time, in the 1946 edition of the U.S. Code, both in the heading of Title III, and in the heading for Section 303. The term has no use.

<sup>15</sup> Amended by acts of Congress, approved Sept. 2, 1958, and Sept. 13, 1976.

<sup>16</sup> Amended by acts of Congress, approved Sept. 2, 1958, and July 31, 1968. Section 2(2) of Public Law 85-909 (Sept. 1, 1958) provided as follows: “*Provided, however,* That nothing herein shall be deemed a definition of the term “public stockyards” as used in Section 15(5) of the Interstate Commerce Act.”



**Section 303. Activity as stockyard dealer or market agency; benefits to business and welfare of stockyard; registration; penalty for failure to register.<sup>17 18</sup>**

After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, which determination shall be made on a basis which is not unreasonable or unjustly discriminatory, and has given written authorization to such person, and (2) he has registered with the Secretary, under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyards services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 301 of the Act may be required to register in such manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$550 for each such offense and not more than \$27.50 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.<sup>19</sup> (7 U.S.C. 203)

**Section 304. General duty as to services; revocation of registration.<sup>20</sup>**

All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory: *Provided*, That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this Act, and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this Act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 315 of this Act. (7 U.S.C. 205)

**Section 305. Rates and charges generally; discrimination.<sup>21</sup>**

All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be

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<sup>17</sup> Amended by acts of Congress, approved Sept. 2, 1958, and July 31, 1968.

<sup>18</sup> The term "Stockyard Dealer" was not part of the original legislative language of the Packers and Stockyards Act as passed by Congress, nor was the term incorporated into the law as a result of any subsequent amendment. The term appears, for the first time, in the 1946 edition of the U.S. Code, both in the heading of Title III, and in the heading for Section 303. The term has no use.

<sup>19</sup> The penalties were amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original penalties in the Packers and Stockyards Act were \$500 and \$25, respectively.

<sup>20</sup> Amended by acts of Congress, approved May 5, 1926, and July 31, 1968.

<sup>21</sup> Amended by an act of Congress, approved Oct. 2, 1978.

unlawful: *Provided*, That rates and charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis. (7 U.S.C. 206)

**Section 306. Schedule of rates.**<sup>22</sup>

(a) FILING; PUBLIC INSPECTION. Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) DETAIL REQUIRED; FORM. Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) CHANGES. No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) REJECTION BY SECRETARY. The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) DETERMINATION OF LAWFULNESS; HEARING; SUSPENSION. Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension,

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<sup>22</sup> Amended by an act of Congress, approved Sept. 13, 1976.

may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) **SUSPENSION OF OPERATIONS; COMPLIANCE.** After the expiration of the sixty days referred to in subsection (a) of this section, no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) **PENALTY.** Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than \$550 for each such offense, and not more than \$27.50 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.<sup>23</sup>

(h) **INTENTIONAL VIOLATIONS; PENALTY.** Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on conviction be fined not more than \$1,000, or imprisoned not more than one year, or both. (7 U.S.C. 207)

**Section 307. Unreasonable or discriminatory practices generally; rights of stockyard owner of management and regulation.**<sup>24</sup>

(a) It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust,

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<sup>23</sup> The penalties were amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original penalties in the Packers and Stockyards Act were \$500 and \$25, respectively.

<sup>24</sup> Amended by an act of Congress, approved July 31, 1968.

unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.

(b) It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market. Such rules and regulations shall not prevent a registered market agency or dealer from rendering service on other markets or in occasional and incidental off-market transactions. (7 U.S.C. 208)

**Section 308. Liability to individuals for violations; enforcement generally.<sup>25</sup>**

(a) If any person subject to this Act violates any of the provisions of this Act, or of any order of the Secretary under this Act, relating to the purchase, sale, or handling of livestock, the purchase or sale of poultry, or relating to any poultry growing arrangement or swine production contract, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 309, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies. (7 U.S.C. 209)

**Section 309. Proceedings before Secretary for violations.**

(a) COMPLAINT; RESPONSE; SATISFACTION OR INVESTIGATION. Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the “defendant”) in violation of the provisions of sections 304, 305, 306, or 307, or of an order of the Secretary made under this title, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

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<sup>25</sup> Amended by acts of Congress, approved Sept. 13, 1976, Nov. 23, 1987, and May 13, 2002.

(b) COMPLAINTS FORWARDED BY AGENCIES OF A STATE OR TERRITORY. The Secretary, at the request of the livestock commissioner, Board of Agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subsection (a) of this section.

(c) INQUIRIES INSTITUTED BY SECRETARY. The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of this title, or concerning which any question may arise under any of the provisions of this title, or relating to the enforcement of any of the provisions of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) DAMAGE TO COMPLAINANT NOT REQUIRED. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) AWARD AND PAYMENT OF DAMAGES. If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) ENFORCEMENT OF ORDERS. If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit. (7 U.S.C. 210)

**Section 310. Order of Secretary as to charges or practices; prescribing rates and practices generally.**<sup>26</sup>

Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his

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<sup>26</sup> Amended by acts of Congress, approved Aug. 10, 1939, and Oct. 2, 1978.

own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be violative of section 304, 305, or 307, the Secretary—

(a) May in accordance with the standard set forth in section 305 determine and prescribe what will be the rate or charge, or rates or charges, to be thereafter in such case observed as the maximum or minimum or both to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed: *Provided*, That the Secretary shall prescribe the rate or charge, or rates or charges, on a percentage or per head basis at the election of the stockyard owner or market agency unless, or on any other basis elected by the stockyard owner or market agency the Secretary finds such other basis to be violative of section 305 of this act; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge or rates or charges so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed. (7 U.S.C. 211)

**Section 311. Prescribing rates and practices to prevent discrimination between intrastate and interstate commerce.**<sup>27</sup>

Whenever in any investigation under the provisions of this title, or in any investigation instituted by petition of the stockyard owner, market agency, or dealer concerned, which petition is authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner, market agency, or dealer, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate commerce or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgement, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners, market agencies, or dealers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (7 U.S.C. 212)

**Section 312. Prevention of unfair, discriminatory, or deceptive practices.**<sup>28</sup>

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subsection (a) of this section, the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. The Secretary may also assess a civil penalty of not more than \$11,000 for each such violation.<sup>29</sup> In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty

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<sup>27</sup> Amended by acts of Congress, approved Sept. 2, 1958, and Sept. 13, 1976.

<sup>28</sup> Amended by acts of Congress, approved Sept. 2, 1958, July 31, 1968, and Sept. 13, 1976.

<sup>29</sup> The civil penalty was amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original civil penalty in the Packers and Stockyards Act was \$10,000.

is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States. (7 U.S.C. 213)

**Section 313. Effective date of orders.**

Except as otherwise provided in this Act all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (7 U.S.C. 214)

**Section 314. Failure to obey orders; punishment.**

(a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 of this Act shall forfeit to the United States the sum of \$550 for each offense.<sup>30</sup> Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various United States attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (7 U.S.C. 215)

**Section 315. Proceedings to enforce orders; injunction.**

If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same. (7 U.S.C. 216)

**Section 316. Proceedings for suspension of orders.**

For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title. (7 U.S.C. 217)

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<sup>30</sup> The penalty was amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original penalty in the Packers and Stockyards Act was \$500.



**Section 317. Fees for inspection of brands or marks.<sup>31</sup>**

(a) AUTHORIZATION BY SECRETARY; REGISTRATION AS MARKET AGENCY. The Secretary may, upon written application made to him, and if he deems it necessary, authorize the charging and collection, at any stockyard subject to the provisions of this Act, by any department or agency of any State in which branding or marking or both branding and marking livestock as a means of establishing ownership prevails by custom or statute, or by a duly organized livestock association of any such State, of a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such State, for the purpose of determining the ownership of such livestock. No charge shall be made under any such authorization until the authorized department, agency, or association has registered as a market agency. No more than one such authorization shall be issued with respect to such inspection of livestock originating in or shipped from any one State. If more than one such application is filed with respect to such inspection of livestock originating in or shipped from any one State, the Secretary shall issue such authorization to the applicant deemed by him best qualified to perform the proposed service, on the basis of (1) experience, (2) financial responsibility, (3) extent and efficiency of organization, (4) possession of necessary records, and (5) any other factor relating to the ability of the applicant to perform the proposed service. The Secretary may receive and consider the recommendations of the commissioner, secretary, or director of agriculture, or other appropriate officer or agency of a State as to the qualifications of any applicant in such State. The decision of the Secretary as to the applicant best qualified shall be final.

(b) APPLICABILITY OF SECTION. The provisions of this title, relating to the filing, publication, approval, modification, and suspension of any rate or charge for any stockyard service shall apply with respect to charges authorized to be made under this section.

(c) COLLECTION AND PAYMENT OF CHARGES. Charges authorized to be made under this section shall be collected by the market agency or other person receiving and disbursing the funds received from the sale of livestock with respect to the inspection of which such charge is made, and paid by it to the department, agency, or association performing such service.

(d) REVOCATION OF AUTHORIZATION OR REGISTRATION. The Secretary may, if he deems it to be in the public interest, suspend, and after hearing, revoke any authorization and registration issued under the provisions of this section or any similar authorization and registration issued under any other provision of law. The order of the Secretary suspending or revoking any such authorization and registration shall not be subject to review. (7 U.S.C. 217a)

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<sup>31</sup> Amended by an act of Congress, approved June 19, 1942.

## **Title IV—General Provisions**

### **Section 401. Accounts and records of business; punishment for failure to keep.<sup>32</sup>**

Every packer, any swine contractor, and any live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than \$5,000, or imprisoned not more than three years, or both. (7 U.S.C. 221)

### **Section 402. Federal Trade Commission powers adopted for enforcement of chapter.<sup>33</sup>**

For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 6, 8, 9, and 10 of the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this Act and to any person subject to the provisions of this Act, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this Act in any part of the United States. (7 U.S.C. 222)

### **Section 403. Responsibility of principal for act or omission of agent.<sup>34</sup>**

When construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any packer, any swine contractor, and any live poultry dealer, stockyard owner, market agency, or dealer, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such packer, any swine contractor, and any live poultry dealer, stockyard owner, market agency, or dealer, as well as that of such agent, officer, or other person. (7 U.S.C. 223)

### **Section 404. Attorney General to institute court proceedings for enforcement.**

The Secretary may report any violation of this Act to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. (7 U.S.C. 224)

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<sup>32</sup> Amended by an act of Congress, approved Nov. 23, 1987, and May 13, 2002.

<sup>33</sup> U.S. Code cites sections 46 and 48 to 50 of title 15, but the Packers and Stockyards Act of 1921 as passed by Congress refers specifically to sections 6, 8, 9, and 10 of the Federal Trade Commission Act as passed on Sept. 26, 1914. The sections referred to in section 402, and section 411, can be found later in this document.

<sup>34</sup> Amended by an act of Congress, approved Nov. 23, 1987, and May 13, 2002.

**Section 405. Laws unaffected.**<sup>35</sup>

Nothing contained in this Act, except as otherwise provided herein, shall be construed—

(a) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890, the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914, the Interstate Commerce Act as amended, the Act entitled “An Act to promote export trade, and for other purposes,” approved April 10, 1918,<sup>36</sup> or sections 73 to 76, inclusive, of the Act of August 27, 1894, entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” as amended by the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February 12, 1913, or

(b) To alter, modify, or repeal such Acts or any part or parts thereof, or

(c) To prevent or interfere with any investigation, proceeding, or prosecution begun and pending at the time this Act becomes effective.<sup>37</sup> (7 U.S.C. 225)

**Section 406.**<sup>38</sup>

(a) POWERS OF INTERSTATE COMMERCE COMMISSION UNAFFECTED. Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission. (7 U.S.C. 226)

POWERS OF FEDERAL TRADE COMMISSION AND SECRETARY OF AGRICULTURE.

(b) JURISDICTION OF FEDERAL TRADE COMMISSION. The Federal Trade Commission shall have power and jurisdiction over any matter involving meat, meat food products, livestock products in unmanufactured form, or poultry products, which by this Act is made subject to the power or jurisdiction of the Secretary, as follows:

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<sup>35</sup> Amended by an act of Congress, approved Nov. 2, 2002.

<sup>36</sup> The Act approved Apr. 10, 1918 was codified in 15 U.S.C. 61-66.

<sup>37</sup> The Packers and Stockyards Act became effective on Aug. 15, 1921.

<sup>38</sup> Amended by acts of Congress, approved Sept. 2, 1958, and Nov. 23, 1987. Section 11 of Pub. L. 100-173, approved Nov. 23, 1987, provides:

(a) General Rule—The amendments made by this act to the Packers and Stockyards Act, 1921, shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act to prevent the use of (1) unfair methods of competition in or affecting commerce, and (2) unfair and deceptive acts or practices in or affecting commerce, involving poultry products.

(b) Secretary’s Authority—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under Sec. 406(e), as amended, of the Packers and Stockyards Act, 1921.

(1) When the Secretary in the exercise of his duties requests of the Commission that it make investigations and reports in any case.

(2) In any investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission, arising out of acts or transactions involving meat, meat food products, or livestock products in unmanufactured form, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Commissioner shall notify the Secretary of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with regard to acts or transactions (other than retail sales) involving such commodities if the Secretary within ten days from the date of receipt of the notice notifies the Commission that there is pending in his Department an investigation of, or proceeding for the prevention of, an alleged violation of this Act involving the same subject matter.

(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.

(c) LIMITATION OF FEDERAL TRADE COMMISSION JURISDICTION. The Federal Trade Commission shall have no power or jurisdiction over any matter which by this Act is made subject to the jurisdiction of the Secretary, except as provided in subsection (b) of this section.

(d) JURISDICTION OF SECRETARY OF AGRICULTURE EXCEPT FOR POULTRY PRODUCTS. The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this Act, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged

violation of any Act administered by the Commission involving the same subject matter.

(e) JURISDICTION OF SECRETARY OF AGRICULTURE REGARDING POULTRY PRODUCTS. The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a proceeding brought under section 207 or section 410 when such action is necessary to avoid impairment of his jurisdiction.

(f) INFORMATION TO BE INCLUDED IN ANNUAL REPORTS. The Secretary of Agriculture and the Federal Trade Commission shall include in their respective annual reports information with respect to the administration of subsections (b), (d), and (e) of this section. (7 U.S.C. 227)

**Section 407. Authority of Secretary.<sup>39</sup>**

(a) RULES, REGULATIONS, AND EXPENDITURES; APPROPRIATIONS. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and as may be appropriated for by Congress, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

(b) DEDUCTIONS FROM PROCEEDS FOR FINANCING PROMOTIONAL, EDUCATIONAL, AND RESEARCH ACTIVITIES. Notwithstanding any other provision of law, the authority of the Secretary under this Act shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities relating to livestock, meat, and other products covered by the Act.

(c) BUDGET ESTIMATE; TESTIMONY OF SECRETARY BEFORE CONGRESSIONAL COMMITTEES. On or before February 15 of each calendar year beginning with calendar year 1977, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purposes authorized in the Packers and Stockyards Act, 1921, as amended.

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<sup>39</sup> Amended by acts of Congress, approved Sept. 2, 1958, July 8, 1963, Sept. 13, 1976, and Oct. 13, 1994.

(d) DEVELOPMENT AND PROMULGATION OF RULES GOVERNING HEARINGS. The Secretary shall, not later than sixty days after the effective date of this subsection,<sup>40</sup> prescribe and implement rules to assure that any hearing from which any order may issue under this Act or any hearing the expenses of which are paid from funds authorized to be appropriated under this Act shall—

- (1) if such hearing concerns a single unit of local government or the residents thereof, be held within the boundaries of such unit;
- (2) if such hearing concerns a single geographic area within a State or the residents thereof, be held within the boundaries of such area; or
- (3) if such hearing concerns a single State or the residents thereof, be held within such State.

(e) DEFINITIONS. For the purposes of subsection (d)—

- (1) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and
- (2) the term “geographic area within a State” means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government. (7 U.S.C. 228)

**Section 408. Authority of Secretary to request temporary injunction or restraining order.<sup>41</sup>**

Whenever the Secretary has reason to believe that any person subject to this Act (a) with respect to any transactions subject to this Act, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement, or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, or otherwise in violation of this Act in a manner which may reasonably be expected to cause irreparable damage to another person; or (c) does not have the required bond; and that it would be in the public interest to enjoin such person from operating subject to this Act or enjoin him from operating subject to this Act except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until a complaint under this Act is issued and dismissed by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this Act or is set aside on appellate review of the Secretary’s order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in

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<sup>40</sup> This subsection became effective on Sept. 13, 1976.

<sup>41</sup> Added by an act of Congress, approved Sept. 13, 1976. Amended by an act of Congress, approved Nov. 23, 1987.

which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction. (7 U.S.C. 228a)

**Section 409. Prompt payment for purchase of livestock.**<sup>42</sup>

(a) FULL AMOUNT OF PURCHASE PRICE REQUIRED; METHODS OF PAYMENT. Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) WAIVER OF PROMPT PAYMENT BY WRITTEN AGREEMENT; DISCLOSURE REQUIREMENTS. Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) DELAY IN PAYMENT OR ATTEMPT TO DELAY DEEMED UNFAIR PRACTICE. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this Act. Nothing in this section

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<sup>42</sup> Added by an act of Congress, approved Sept. 13, 1976.

shall be deemed to limit the meaning of the term “unfair practice” as used in this Act. (7 U.S.C. 228b)

**Section 410. Final date for making payment to cash seller or poultry grower.<sup>43</sup>**

(a) DELIVERY OF FULL AMOUNT DUE. Each live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry, and each live poultry dealer obtaining live poultry under a poultry growing arrangement shall, before the close of the fifteenth day following the week in which the poultry is slaughtered, deliver, to the cash seller or poultry grower from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller or poultry grower on account of such poultry.

(b) DELAY OR ATTEMPT TO DELAY COLLECTION OF FUNDS AS “UNFAIR PRACTICE”. Any delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchase in a cash sale, shall be considered an “unfair practice” in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term “unfair practice” as used in this Act.

(c) DEFINITION OF CASH SALE. For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer. (7 U.S.C. 228b-1)

**Section 411. Violations by live poultry dealers.<sup>44</sup>**

(a) WRITTEN COMPLAINT BY SECRETARY; HEARING; INTERVENTION; AMENDED COMPLAINT. Whenever the Secretary has reason to believe that any live poultry dealer has violated or is violating any provision of section 207 or section 410 of this Act, he shall cause a complaint in writing to be served upon the live poultry dealer, stating his charges in that respect, and requiring the live poultry dealer to attend and testify at a hearing at a time and place designated therein, at least 30 days after the service of such complaint; and at such time and place there shall be afforded the live poultry dealer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing, the Secretary may amend the complaint; but in case of any amendment adding new charges, the hearing shall, on the request of the live poultry dealer, be adjourned for a period not exceeding 15 days.

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<sup>43</sup> Added by an act of Congress, approved Nov. 23, 1987.

<sup>44</sup> Added by an act of Congress, approved Nov. 23, 1987.



(b) REPORT ON FINDINGS OF FACT BY SECRETARY; CEASE AND DESIST ORDER; ASSESSMENT OF CIVIL PENALTY; ACTION BY ATTORNEY GENERAL UPON LIVE POULTRY DEALER'S FAILURE TO PAY PENALTY. If, after such hearing, the Secretary finds that the live poultry dealer has violated, or is violating, any provisions of section 207 or section 410 of the Act covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the live poultry dealer an order requiring such live poultry dealer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$22,000 for each such violation.<sup>45</sup> In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business: *Provided, however,* That in no event can the penalty assessed by the Secretary take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General, who may recover such penalty by an action in the appropriate District Court of the United States.

(c) AMENDMENT OR SETTING ASIDE OF REPORT OR ORDER. Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 412, the Secretary, at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the live poultry dealer to be heard, may amend or set aside the report or order, in whole or in part.

(d) SERVICE OF COMPLAINTS, ORDERS, AND OTHER PROCESSES. Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914. (7 U.S.C. 228b-2)

#### **Sec 412. Judicial review of order regarding live poultry dealer.<sup>46</sup>**

(a) FINALITY OF ORDER UNLESS APPEAL TO COURT OF APPEALS; TIME LIMIT; BOND. An order made under section 411 shall be final and conclusive unless within 30 days after service the live poultry dealer appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as

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<sup>45</sup> The civil penalty was amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original civil penalty in the Packers and Stockyards Act was \$20,000.

<sup>46</sup> Added by an act of Congress, approved Nov. 23, 1987.

the court may determine, conditioned that such live poultry dealer will pay the costs of the proceedings if the court so directs.

(b) NOTIFICATION OF APPEAL TO SECRETARY; FILING OF RECORD WITH COURT. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) ISSUANCE OF TEMPORARY INJUNCTION. At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the live poultry dealer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) EVIDENCE IN RECORD AS EVIDENCE IN CASE; EXPEDITED PROCEEDINGS. The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

(e) ACTION BY COURT. The court may affirm, modify, or set aside the order of the Secretary.

(f) TAKING OF ADDITIONAL EVIDENCE; MODIFIED OR ADDITIONAL FINDINGS BY SECRETARY. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

(g) AFFIRMANCE OR MODIFICATION OF ORDER AS INJUNCTION. If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) EXCLUSIVE JURISDICTION OF COURT OF APPEALS; FINALITY OF DECREE; APPEAL TO SUPREME COURT; STAY OF DECREE. The court of appeals shall have jurisdiction which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the

decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, United States Code, if such writ is duly applied for within 60 days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court. (7 U.S.C. 228b-3)

**Section 413. Violation of final order by live poultry dealer; penalty.**<sup>47</sup>

Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 411, or such order as modified—

(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) after such order, or such order as modified, has been sustained by the courts as provided in section 412; shall on conviction be fined not less than \$1,000 nor more than \$20,000. Each day during which such failure continues shall be deemed a separate offense. (7 U.S.C. 228b-4)

**Section 414. Federal preemption of State and local requirements.**<sup>48</sup>

No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), and prompt payment provisions of section 409 of this Act, respectively; *Provided*, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this Act, which is not in conflict with the Act or regulations thereunder: *Provided further*, That this section shall not preclude a State from enforcing State law or regulations with respect to any packer not subject to this Act or the Act of July 12, 1943.<sup>49</sup> (7 U.S.C. 228c)

**Section 415. Annual Assessment of Cattle and Hog Industries.**<sup>50</sup>

Not later than March 1 of each year, the Secretary shall submit to Congress and make publicly available a report that—

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<sup>47</sup> Added by an act of Congress, approved Nov. 23, 1987.

<sup>48</sup> Added as Sec. 410 by an act of Congress, approved Sept. 13, 1976; redesignated as Sec. 414 by an act of Congress, approved Nov. 23, 1987.

<sup>49</sup> The Act of July 12, 1943 is codified as 7 U.S.C. 204. It is included in this publication following the Packers and Stockyards Act.

<sup>50</sup> Added by an act of Congress, approved Nov. 9, 2000.

- (1) assesses the general economic state of the cattle and hog industries;
- (2) describes changing business practices in those industries; and
- (3) identifies market operations or activities in those industries that appear to raise concerns under this Act. (7 U.S.C. 228d)

**Section 416. Separability.**<sup>51</sup>

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 229)

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<sup>51</sup> Formerly Sec. 408, redesignated as Sec. 411 by an act of Congress, approved Sept. 13, 1976; redesignated as Sec. 415 by an act of Congress, approved Nov. 23, 1987, and redesignated as Sec. 416 by an act of Congress, approved Nov. 9, 2000.

**Supplement to the Packers and Stockyards Act  
Applies to Packers (see Title II of the Packers and Stockyards Act) and  
Market Agencies and Dealers (see Title III of the Packers and Stockyards Act)**

**7 U.S.C. 204 Bond and suspension of registrants.<sup>52</sup>**

On and after July 12, 1943, the Secretary may require reasonable bonds from every market agency (as defined in title III of the Packers and Stockyards Act), every packer (as defined in title II of the Packers and Stockyards Act) in connection with its livestock purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this paragraph), and every other person operating as a dealer (as defined in title III of the Packers and Stockyards Act), under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of the Packers and Stockyards Act he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 of the Packers and Stockyards Act requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the Secretary may prescribe to effectuate the purposes of the Packers and Stockyards Act. (7 U.S.C. 204)

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<sup>52</sup> This section was enacted as part of the Department of Agriculture Appropriation Act, 1944, July 12, 1943, and not an amendment to the Packers and Stockyards Act. The provisions contained in this section apply for carrying out the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181-229). This section is one of the supplements to the Packers and Stockyards Act. Amended by an act of Congress, approved Sept. 13, 1976.

**Sections of the Federal Trade Commission Act  
Sections 6 and 8 through 10 of the Federal Trade Commission Act<sup>53</sup> as Made  
Applicable to the Jurisdiction of the Secretary of Agriculture Pursuant to  
7 U.S.C. 222 (Section 402 of the P&S Act)**

**Section 4.<sup>54</sup>**

The words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers and correspondence in existence at and after the passage of this Act.

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce” approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto.

“Antitrust acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890; also sections 73-77, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August 27, 1894; and also the Act entitled “An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February 12, 1913.

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<sup>53</sup> 38 Stat. 719 et seq. The Federal Trade Commission Act as amended is found at 15 U.S.C. 41 - 58. See annotation 2 L., Ed. 2d 2048 *et seq.*

<sup>54</sup> Section 4, although not adopted in the P&S Act, may be helpful to an understanding of Sections 6, 8, 9, and 10.

## **Section 6.**

The Commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

**Section 8.**

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the Commission as he may direct.

**Section 9.**

For the purposes of this Act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof.



The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(See 18 U.S.C part V; sections 201,211,259, P.L. 91-452, 84 Stat. 922 et seq.)

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**Section 10.**

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the

United States the sum of \$110 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business.<sup>55</sup> It shall be the duty of the various district attorneys,<sup>56</sup> under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

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<sup>55</sup> The penalty was amended by 7 CFR 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original penalty in the Federal Trade Commission Act was \$100.

<sup>56</sup> Act of June 25, 1948, 62 Stat. 909, substituted “United States attorneys” for “district attorneys.”

**Sections of the Agricultural Marketing Act of 1946 Sections 212, 231 and 251 as Made Applicable to Subtitle B—Swine Packer Marketing Contracts (Swine Contract Library), of the Packers and Stockyards Act, 1921, Pursuant to Section 221, subsections (2) and (8) and Section 222, subsection (c) of the P&S Act**

**Section 212. Definitions.**

In this subtitle:

- (1) **BASE PRICE.**—The term “base price” means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of carcass weight.
- (2) **BASIS LEVEL.**—The term “basis level” means the agreed-on adjustment to a future price to establish the final price paid for livestock.
- (3) **CURRENT SLAUGHTER WEEK.**—The term “current slaughter week” means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.
- (4) **F.O.B.**—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.
- (5) **LIVESTOCK.**—The term “livestock” means cattle, swine, and lambs.
- (6) **LOT.**—The term “lot” means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller.
- (7) **MARKETING.**—The term “marketing” means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.
- (8) **NEGOTIATED PURCHASE.**—The term “negotiated purchase” means a cash or spot market purchase by a packer of livestock from a producer under which—
  - (A) the base price for the livestock is determined by seller-buyer interaction and agreement on a day; and
  - (B) the livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer.
- (9) **NEGOTIATED SALE.**—The term “negotiated sale” means a cash or spot market sale by a producer of livestock to a packer under which—
  - (A) the base price for the livestock is determined by seller-buyer interaction and agreement on a day; and
  - (B) the livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer.

- (10) **PRIOR SLAUGHTER WEEK.**—The term “prior slaughter week” means the Monday through Sunday prior to a reporting day.
- (11) **PRODUCER.**—The term “producer” means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).
- (12) **REPORTING DAY.**—The term “reporting day” means a day on which—
- (A) a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer;
  - (B) the Secretary is required to make information concerning the business described in subparagraph (A) available to the public; and
  - (C) the Department of Agriculture is open to conduct business.
- (13) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.
- (14) **STATE.**—The term “State” means each of the 50 States. (7 U.S.C. 1635a)

**Section 231. Definitions.**

In this chapter:

- (1) **AFFILIATE.**—The term “affiliate,” with respect to a packer, means—
- (A) a person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;
  - (B) a person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and
  - (C) a person that directly or indirectly controls, or is controlled by or under common control with, the packer.
- (2) **APPLICABLE REPORTING PERIOD.**—The term “applicable reporting period” means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as required under section 232(c).
- (3) **BARROW.**—The term “barrow” means a neutered male swine.
- (4) **BASE MARKET HOG.**—The term “base market hog” means a hog for which no discounts are subtracted from and no premiums are added to the base price.
- (5) **BRED FEMALE SWINE.**—The term “bred female swine” means any female swine, whether a sow or gilt, that has been mated or inseminated and is assumed, or has been confirmed, to be pregnant.

- (6) **FORMULA PRICE.**—The term “formula price” means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.
- (7) **GILT.**—The term “gilt” means a young female swine that has not produced a litter.
- (8) **HOG CLASS.**—The term “hog class” means, as applicable—
- (A) barrows or gilts;
  - (B) sows; or
  - (C) boars or stags.
- (9) **NONCARCASS MERIT PREMIUM.**—The term “noncarcass merit premium” means an increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine.
- (10) **OTHER MARKET FORMULA PURCHASE.**—
- (A) **IN GENERAL.**—The term “other market formula purchase” means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product.
  - (B) **INCLUSION.**—The term “other market formula purchase” includes a formula purchase in a case in which the price formula is based on one or more futures or options contracts.
- (11) **OTHER PURCHASE ARRANGEMENT.**—The term “other purchase arrangement” means a purchase of swine by a packer that—
- (A) is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and
  - (B) does not involve packer-owned swine.
- (12) **PACKER.**—The term “packer” means any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce, except that—
- (A) the term includes only a swine processing plant that is federally inspected;

(B) for any calendar year, the term includes only a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years; and

(C) in the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this chapter.

(13) PACKER-OWNED SWINE.—The term “packer-owned swine” means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

(14) PACKER-SOLD SWINE.—The term “packer-sold swine” means the swine that are—

(A) owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and

(B) sold for slaughter to another packer.

(15) PORK.—The term “pork” means the meat of a porcine animal.

(16) PORK PRODUCT.—The term “pork product” means a product or byproduct produced or processed in whole or in part from pork.

(17) PURCHASE DATA.—The term “purchase data” means all of the applicable data, including weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by—

(A) hog class;

(B) type of purchase; and

(C) packer-owned swine.

(18) SLAUGHTER DATA.—The term “slaughter data” means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of when the price of the swine was negotiated or otherwise determined, reported by—

(A) hog class;

(B) type of purchase; and

(C) packer-owned swine.

(19) SOW.—The term “sow” means an adult female swine that has produced one or more litters.

(20) SWINE.—The term “swine” means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

(21) SWINE OR PORK MARKET FORMULA PURCHASE.—The term “swine or pork market formula purchase” means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

(22) TYPE OF PURCHASE.—The term “type of purchase,” with respect to swine, means—

- (A) a negotiated purchase;
- (B) other market formula purchase;
- (C) a swine or pork market formula purchase; and
- (D) other purchase arrangement. (7 U.S.C. 1635i)

**Section 251. General Provisions.**

(a) CONFIDENTIALITY.—The Secretary shall make available to the public information, statistics, and documents obtained from, or submitted by, packers, retail entities, and other persons under this subtitle in a manner that ensures that confidentiality is preserved regarding—

- (1) the identity of persons, including parties to a contract; and
- (2) proprietary business information.

(b) DISCLOSURE BY FEDERAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—Subject to paragraph (2), no officer, employee, or agent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this subtitle.

(2) EXCEPTIONS.—Information obtained by the Secretary under this subtitle may be disclosed—

- (A) to agents or employees of the Department of Agriculture in the course of their official duties under this subtitle;
- (B) as directed by the Secretary or the Attorney General, for enforcement purposes; or
- (C) by a court of competent jurisdiction.

(3) DISCLOSURE UNDER FREEDOM OF INFORMATION ACT.—  
Notwithstanding any other provision of law, no facts or information obtained under this subtitle shall be disclosed in accordance with section 552 of title 5, United States Code.

(c) REPORTING BY PACKERS.—A packer shall report all information required under this subtitle on an individual lot basis.

(d) REGIONAL REPORTING AND AGGREGATION.—The Secretary shall make information obtained under this subtitle available to the public only in a manner that—

- (1) ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;
- (2) ensures that the identity of a reporting person is not disclosed; and
- (3) conforms to aggregation guidelines established by the Secretary.

(e) ADJUSTMENTS.—Prior to the publication of any information required under this subtitle, the Secretary may make reasonable adjustments in information reported by packers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(f) VERIFICATION.—The Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported under chapter 2, 3, or 4 of the Livestock Mandatory Reporting Act of 1999.<sup>57</sup>

(g) ELECTRONIC REPORTING AND PUBLISHING.—The Secretary shall, to the maximum extent practicable, provide for the reporting and publishing of the information required under this subtitle by electronic means.

(h) REPORTING OF ACTIVITIES ON WEEKENDS AND HOLIDAYS.—

(1) IN GENERAL.—Livestock committed to a packer, or purchased, sold, or slaughtered by a packer, on a weekend day or holiday shall be reported by the packer to the Secretary (to the extent required under this subtitle), and reported by the Secretary, on the immediately following reporting day.

(2) LIMITATION ON REPORTING BY PACKERS.—A packer shall not be required to report actions under paragraph (1) more than once on the immediately following reporting day.

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<sup>57</sup> Chapters 2, 3, and 4 are part B, Cattle Reporting; part C, Swine Reporting; and part D, Lamb Reporting; respectively of Subtitle B of the Livestock Mandatory Reporting Act of 1999 which amended the Agricultural Marketing Act of 1946. (See 7 U.S.C. 1635d-1635m.)



(i) EFFECT ON OTHER LAWS.—Nothing in this subtitle, the Livestock Mandatory Reporting Act of 1999, or amendments made by that Act restricts or modifies the authority of the Secretary to—

(1) administer or enforce the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(2) administer, enforce, or collect voluntary reports under this title or any other law; or

(3) access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). (7 U.S.C. 1636)

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